133-587

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1889.

No. 1195.

THE LOUISVILLE, NEW ORLEANS AND TEXAS RAILWAY COMPANY, PLAINTIFF IN ERROR,

vs.

THE STATE OF MISSISSIPPI.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MISSISSIPPI.

FILED AUGUST 13, 1889.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, AUGUST 13, 1889.

1 Supreme Court of Mississippi. April Term, A. D. 1889.

Pleas and proceedings had and done at a regular term of the supreme court of Mississippi, begun and held in the court-room, in the capitol, in the city of Jackson, on the first Monday, the 1st day, of April, in the year of our Lord one thousand eight hundred and eighty-nine.

Present: The Honorable James M. Arnold, chief justice, and the Honorable J. A. P. Campbell and the Honorable Tim. E. Cooper, associate justices; also Oliver Clifton, clerk of said court, in person and by his deputy, C. C. Campbell; W. C. Harrell, marshal, and Nicholas Francisco, porter.

Proclamation having been duly made, the court proceeded to the dispatch of business.

Be it remembered that on the 17 day of April, 1889, there was filed in said supreme court a record from the circuit court of Tunica county in words and figures following, to wit:

THE STATE OF MISSISSIPPI, }
Tunica County. }

Be it remembered that on this the 23rd day of July, 1888, the same being the 4th Monday of said month and a day fixed by law for the holding of a regular term of the hon. circuit court in and for said county, there was begun and held a regular term of said court, at the court-house, in the town of Austin, when there was [were] present Hon. J. H. Wynn, judge of the 4th judicial district, presiding; J. J. Slack, district attorney; W. G. Jaquess, clerk of said court; J. W. Johnson, sheriff of said county.

The sheriff returned the following *venire facias* into court, which is in words and figures as follows, to wit:

THE STATE OF MISSISSIPPI, }
Tunica County. }

Board of Supervisors. June Term, 1888.

Be it remembered that at the above-stated term of the honorable board of supervisors of said county an order was then and there made by said board, which was in the following words, to wit:

Ordered by the board that the following-named persons be selected, and the sheriff is directed to summon, to serve as grand jurors, at the July term, 1888, of the circuit court, to wit:

Dist. No. 1.

1. O. F. West.
2. W. C. Mullens.
3. Chas. Hilliard.
4. Steve Castleberry.

Dist. No. 2.

5. G. W. McClure.
6. Marshal Tragier.
7. Ned Jones.
8. Oscar Mhoon.

No. 3.	*No.* 4.
9. J. M. Bailey.	13. W. P. Eades.
10. W. Q. Robley.	14. W. B. Myers.
11. Blan Bolan.	15. S. T. White.
12. G. R. Donnell.	16. E. A. Woodson.

Dist. No. 5.

17. B. L. Lake.	18. J. C. Arnold.
19. Josephus Bradley.	20. E. Carter.

I, W. G. Jaquess, clerk of the chancery court and *ex officio* clerk of the board of supervisors in and for said county and State aforesaid, do hereby certify that the above and foregoing is a just, true, and perfect copy of an order of the board of supervisors made and
2 entered at their June term thereof, A. D. 1888, as the same appears of record in my office in Minute Book 3, p. 78.

Given under my hand and official seal this 6 of July, A. D. 1889.

[L. S.] W. G. JAQUESS, *Clerk.*

Executed by summoning all the within-named parties to serve as grand jurors at July term.

J. W. JOHNSON, *Sh'ff.*

Of the number so selected and summoned Geo. R. Donnell and O. F. West were by the court excused on account of sickness; W. C. Mullens, being over the age of sixty years, was by the court excused; whereupon the court ordered the sheriff to summon three citizens of Tunica county to serve as grand jurors for the term, when the sheriff returned the names of the following persons, being citizens of said county, to wit: G. R. Kessee, R. Donnell, C. A. Crenshaw; and of the number so selected, summoned, and appearing, after being by the court examined under oath touching their qualification as grand jurors for the present term of the court and found to be qualified, being citizens of said county, — were duly sworn, empanneled, and charged to inquire in and for the body of the county of Tunica at the present term of the court, being 20 in number, as follows, to wit:

1, G. R. Kessee; 2, C. A. Crenshaw; 3, Chas. Hilliard; 4, Steve Castleberry; 5, G. W. McClure; 6, Marshal Tragier; 7, Ned Jones; 8, Oscar Mhoon; 9, J. N. Bailey; 10, W. Q. Robley; 11, Blan Bolan; 12, R. Donnell; 13, W. P. Eades; 14, W. B. Myers; 15, S. T. White; 16, E. W. Woodson; 17, B. L. Lake; 18, J. C. Arnold; 19, Josephus Williams; 20, Edward Carter.

Of the number so selected, summoned, and charged as aforesaid, W. Q. Robley was by the court appointed foreman of the grand jury for the present term, who, in open court and in the presence of the other members of the grand jury, took the oath prescribed by the statutes, and the other grand jurors took the same oath their foreman had taken before them. After being charged by the court touching their duties as grand jurors — retired to consider of the

same in charge of A. T. Kennon, bailiff, who was sworn according to law.

In the circuit court of Tunica county, July term, 1888, 10th day of said term, being the 1st day of August, 1888, the grand jurors of the State of Mississippi, elected, empanneled, sworn, and charged to inquire in and for the body of the county aforesaid, came into open court, attended by their proper officer, there being then and there present at least twelve of their number, and upon their oaths and through their foreman presented to the court the following true bill of indictment, which is indorsed a "true" bill and signed by the said foreman and entered and signed by the clerk of said court as follows, to wit:

THE STATE OF MISSISSIPPI,
Tunica County.

Circuit Court. July Term, 1888.

The grand jurors for and of the State of Mississippi, duly elected, empanneled, sworn, and charged to inquire in and for the body of Tunica county, in the name and by the authority of the State of Mississippi, upon their oaths do present that the Louisville, New Orleans and Texas Railroad Company, in said Tunica county, on the 23 of July, 1888, then and there was engaged in carrying passengers in said county and State, — unlawfully and wilfully neglected and refused to provide equal and separate accommodations for the white and colored races; and the grand jurors aforesaid, upon their oaths aforesaid, do further present that the said Louisville, New Orleans and Texas Railroad Company, a corporation chartered under the laws of the State of Mississippi, running and operating a railroad for carrying passengers in the county and State aforesaid, did unlawfully and wilfully neglect and refuse to provide two or more passenger cars and separate accommodations, one for the white race and one for the colored race, contrary to the form of the statute in such cases made and provided and against the peace and dignity of the State of Mississippi.

3

J. J. SLACK,
District Attorney.

Endorsed: No. 946. The State of Mississippi *vs.* L., N. O. & T. R. R. Co. Failure to provide separate accommodations. No prosecutor. State witnesses: Kessee (G. R.), Chas. Hilliard, G. W. McClure, Seph Williams. A true bill. W. Q. Robley, foreman of grand jury. Filed in open court 1st day of August, 1888. W. G. Jaquess, clerk.

And the same, so presented, indorsed, and signed, was received by the court and filed by the clerk, with his indorsement of filing thereon.

STATE *against* THE LOUISVILLE, NEW ORLEANS & TEXAS RAILWAY.

And the said defendant comes and says it is not guilty of the several offenses as charged in the indictment in manner and form as therein stated; and of this it puts itself upon the country.

THE LOUISVILLE, NEW ORLEANS & TEXAS RAILWAY COMPANY,
By PERKINS & PERCY, *Att'ys.*

STATE OF MISS.
vs.
L., N. O. & T. R'Y CO. } 946.

In this cause the defendants, by their attorneys, entered an appearance, waive an arraignment, and by consent the cause is continued.

Plea.

THE STATE OF MISSISSIPPI,
Tunica County.

In the Circuit Court of said County. January Term, 1889.

THE STATE OF MISSISSIPPI
v.
THE LOUISVILLE, NEW ORLEANS & TEXAS RAILWAY COMPANY.

And the said Louisville, New Orleans and Texas Railway Company, by its attorneys, comes into court here and, having heard the said indictment read (and protesting that it is not guilty of the premises charged in said indictment), says that on and before and ever since the 1st day of May, 1888, the defendant owned and operated a line of railroad forming a continuous and unbroken line of railway from Memphis, in the State of Tennessee, to New Orleans, in the State of Louisiana, and now doth own and operate the same, carrying then and now on its passenger trains passengers of both the white and colored races from Memphis and other points in the State of Tennessee destined to New Orleans and other points in the State of Louisiana and other States in the United States; and, so carrying then and now passengers of both of said races from New Orleans and other points in the State of Louisiana destined to Memphis, Tennessee, and other points in the State of Tennessee and elsewhere throughout the United States, that it doth now and
4 hath at all times and on all occasions provided equal, but not separate, accommodations for passengers of the white and colored races; that to provide separate accommodations for the two races would greatly increase the — carrying the interstate passengers aforesaid, and greatly hinder, delay, and obstruct the defendant in making its interstate connections with other carriers of passengers; and that it hath not since long prior to the 1st day of May, 1888, carried any passenger in the county of Tunica aforesaid or within the limits of the State of Mississippi save only upon its passenger trains regularly engaged and operated in the interstate carriage of

passengers as aforesaid, and in all instances actually carrying such interstate passengers, the right, privilege, and immunity of doing which, free from any governmental regulation or control thereof save by the Congress of the United States, the defendant doth claim and plead under article one, section eight, of the Constitution of the United States; and this defendant is ready to verify. Wherefore it prays judgment, and that by the court here it may be dismissed and discharged from the said premises in the said indictment specified.

THE LOUISVILLE, NEW ORLEANS & TEXAS R'Y CO.,
By PERKINS & PERCY, *Att'ys.*

Endorsed: Filed Feb'y 1st, 1889. W. G. Jaquess, cl'k.

Demurrer.

THE STATE OF MISSISSIPPI
vs.
THE LOUISVILLE, NEW ORLEANS & TEXAS RAILROAD COMPANY.

And J. J. Slack, district attorney, who prosecutes for the State of Mississippi in this behalf, as to the said plea of the said defendant by it above pleaded and set forth saith that the said plea and the matters therein contained, in manner and form as the same are above pleaded and set forth, are not sufficient in law to bar or preclude the State of Mississippi from prosecuting the said indictment against them, the said railroad company, and that he, the said J. J. Slack, for the State of Mississippi, is not bound by the law of the land to answer the same; and this he, the said district att'y aforesaid, who prosecutes as aforesaid, is ready to verify.

Wherefore, for want of a sufficient plea in this behalf, the said J. J. Slack, district att'y, for the State of Mississippi, prays judgment, and that the said Louisville New Orleans & Texas Railroad Company may be convicted of the premises above charged upon it in and by said indictment.

J. J. SLACK,
District Attorney.

Endorsed: Filed Feb'y 1, 1889. W. G. Jaquess, cl'k.

Judgment.

Circuit Court of Tunica County, Mississippi. January Term, 1889.

STATE
vs.
LOUISVILLE, NEW ORLEANS & TEXAS RAILROAD CO. } 946.

This day came the district attorney, who prosecutes for and in behalf of the State; also came the defendant, by its attorney, and upon being arraigned at the bar of the court to answer the State of Mississippi to a charge of failure to provide separate apartments for the

different races, whereupon the State filed a demurrer to the special plea of the defendant, which demurrer was by the court sustained; to which action of the court the defendant excepted, and for further plea says it is not guilty, and for trial puts itself upon the country. Whereupon came a jury of good and lawful men, to wit, T. D. Coopwood and eleven others, citizens of Tunica county, — duly elected, tried, and charged to well and truly try the issue joined, upon their oaths do say: We, the jury, find defendant guilty as charged. Whereupon it is ordered by the court that the defendant be fined in the sum of $250.00 and pay the costs of this cause.

To the clerk of the circuit court of Tunica county, Mississippi:

The petition of the Louisville, New Orleans & Texas Railway Company shows that it is the defendant in a certain cause lately pending in said court, by indictment styled on the dockets thereof No. 946, The State of Mississippi *vs.* The Louisville, New Orleans & Texas Railway Company; indictment for failure to provide separate accommodations for the white and colored races. And the said defendant now prays an appeal to the next term of the supreme court of the State of Mississippi from the judgment rendered in said case at the January term, 1889, of said circuit court, whereby the defendant, your petitioner, was by the court sentenced to pay a fine of $250.00 and the costs of the case. And your petitioner herewith files with and tenders its appeal bond for supersedeas of said judgment.

THE LOUISVILLE, NEW ORLEANS & TEXAS R'Y CO.,
By PERKINS & PERCY, *Att'ys.*

Endorsed: Filed March 16th, 1889. W. G. Jaquess, cl'k, by W. J. Nelson, D. C.

Be it known that we, The Louisville, New Orleans & Texas Railway Company, a corporation, as principal, and Calvin Perkins, as surety, are held and firmly bound unto The State of Mississippi in the penal sum of six hundred dollars; but the condition of the above obligation is that whereas the above-bound Louisville, New Orleans & Texas Railway Company prays an appeal to the next term of the supreme court of the State of Mississippi from the judgment rendered in the circuit court of Tunica county, Mississippi, at the January term, 1889, of said circuit court, in the case lately pending in said circuit court, styled on the dockets thereof No. 946, The State of Mississippi *v.* The Louisville, New Orleans and Texas Railway Company; indictment for failure to provide separate accommodations for the white and colored races; by which judgment of said circuit court the said appellant was sentenced to pay a fine of two hundred and fifty dollars ($250) and all of the costs of that case: Now, if the said appellant shall pay said judgment and all costs accrued and to accrue in said case on appeal, in case the said judgment is affirmed, then the said obligation shall be void; but otherwise it shall remain in full force.

Signed this 16th day of March, 1889.

THE LOUISVILLE, NEW ORLEANS & TEXAS RAILWAY COMPANY,
By CALVIN PERKINS, *Att'y.*
CALVIN PERKINS.

Approved March 16th, 1889.

W. G. JAQUESS, *Clerk,*
By W. J. NELSON, *D. C.*

Endorsed: Filed March 16th, 1889. W. G. Jaquess, cl'k, by W. J. Nelson, D. C.

6 THE STATE OF MISSISSIPPI, }
Tunica County. }

I, W. G. Jaquess, clerk of the circuit court in and for said county, do hereby certify that the foregoing 15 pages contain a true and correct copy of all the pleadings, proceedings, and papers on the State docket of said court styled No. 946, The State of Mississippi *v.* L., N. O. & T. R. R. Co., together with the original appeal bond, as the same appears of record and on file in my office.

Given under my hand and official seal this 3 day of April, 1889.

W. G. JAQUESS, *Clerk,*
[SEAL.] By W. J. NELSON, *D. C.*

The foregoing record endorsed: Filed Ap'l 17, 1889. Oliver Clifton, cl'k, by C. C. Campbell, D. C.

And on the 17 day of April, 1889, the following assignment of errors was filed in said cause in said supreme court, to wit:

STATE OF MISSISSIPPI:

In the Supreme Court. April Term, A. D. 1889.

THE L., N. O. & T. R'Y CO. } Appeal from Circuit Court
v. } of Tunica County.
THE STATE. }

Assignment of Errors.

Comes the appellant, by attorney, and for error in the court below assigns the following:

1. The court erred in sustaining the demurrer to defendant's (appellant's) special plea.

2. The court erred in rendering judgment against the defendant (appellant).

Respectfully submitted,

W. P. & J. B. HARRIS,
For Appellant.

And on the 22 day of April, 1889, there was filed in said supreme court in said cause an assignment of errors in words and figures as follows, to wit:

In Supreme Court, on Appeal from the Circuit Court of Tunica County.

LOUISVILLE, NEW ORLEANS & TEXAS RAILWAY COMPANY
vs.
THE STATE OF MISSISSIPPI.
} Assignment of Errors.

The court erred in sustaining the demurrer of the State of Mississippi to the special plea of the appellant setting forth that the law, viz., "An act to promote the comfort of passengers," approved March 2nd, 1888, for a violation of which appellant was indicted, was in conflict with article 1, section 8, of the Constitution of the United States, and was therefore unconstitutional and void in so far as it affected interstate commerce.

2. The court erred in not dismissing the indictment found against the appellant under the aforesaid law and discharging appellant from further answering said indictment.

YERGER & PERCY,
Att'ys for Appellant.

7 And on Monday, the 6 day of May, 1889, the following order was made and entered in said cause, to wit:

LOUISVILLE, NEW ORLEANS & TEXAS RAILWAY CO.
v.
STATE OF MISSISSIPPI.
} 6058.

Submitted on brief by Mess. W. P. & J. B. Harris, for appellant, with leave to the State to file briefs in ten days.

And on the 10 day of June, 1889, opinions by said supreme court were filed in said cause in words and figures as follows, to wit:

LOUISVILLE, NEW ORLEANS & TEXAS RAILWAY CO.
v.
STATE OF MISSISSIPPI.
} 6058.

COOPER, *J.*, delivered the opinion of the court:

On the 2nd of March, 1888, the Legislature of this State passed an act entitled "An act to promote the comfort of passengers on railroad trains," which is as follows:

SEC. 1. "That all railroads carrying passengers in this State (other than street railroads) shall provide equal but separate accommodations for the white and colored races, by providing two or more passenger cars for each passenger train or by dividing the passenger cars by a partition so as to secure separate accommodations."

SEC. 2. "That the conductors of such passenger trains shall have power, and are hereby required, to assign each passenger to the car or the compartment of a car (when it is divided by a partition) used for the race to which such passenger belongs, and should any passenger refuse to occupy the car to which he or she is assigned by such conductor said conductor shall have power to refuse to carry such passenger on his train, and for such refusal neither he nor the railroad company shall be liable for any damages in any court in this State."

SEC. 3. "All railroad companies that shall refuse or neglect, within sixty days after the approval of this act, to comply with the requirements of section one of this act shall be deemed guilty of a misdemeanor, and shall, upon conviction in a court of competent jurisdiction, be fined not more than five hundred dollars, and any conductor that shall neglect or refuse to carry out the provisions of this act shall, upon conviction, be fined not less than twenty-five nor more than fifty dollars for each offense."

On the first day of August, 1888, the appellant was indicted in the circuit court of Tunica county for failure to comply with section one of the act above, and in defense pleaded that it owned and operated a continuous road running from the city of Memphis, in the State of Tennessee, through and across the State of Mississippi and to the city of New Orleans, in the State of Louisiana, carrying on its passenger trains passengers of both the white and colored races from Memphis and other points in the State of Tennessee destined to New Orleans and other points in the State of Louisiana and other States in the United States, and so carrying passengers of both races from New Orleans and other points in the State of Louisiana destined to Memphis, Tennessee, and other points in the State of Tennessee and elsewhere throughout the United States; that it doth now and hath at all times and on all occasions provided equal, but not separate, accommodations for passengers of the white and colored races; that to provide separate accommodations for the two races would greatly increase the cost of carrying the interstate passengers aforesaid and greatly hinder, delay, and obstruct the defendant in making its interstate connections with other carriers of passengers, and that it hath not since long prior
8 to the first day of May, 1888, carried any passenger in the county of Tunica or within the limits of the State of Mississippi, save only upon its trains regularly engaged and operated in the interstate carriage of passengers aforesaid, and in all instances actually carrying such interstate passengers, the right, privilege, and immunity of doing which, free from any governmental regulation or control thereof save by the Congress of the United States, the defendant doth plead and claim, under article one, section eight, of the Constitution of the United States; and this the defendant is ready to verify. Wherefore, &c.

To this plea a demurrer was interposed by the State, which was sustained by the court; and thereupon, a plea of not guilty being filed, there was trial and conviction, and the defendant appeals.

It is assumed by counsel for appellant that the act under consider-

ation was intended to regulate not only the transportation of passengers taken up and set down within the State, but those taken up within the State to be carried without, and those taken up without to be brought within, and those taken up without to be carried across the State and into other States.

An examination of the record shows that the omission for which the indictment was found was the neglect to provide the "separate" accommodation required by section one of the act, and not for failing to assign to such separate car or compartment interstate travelers upon appellant's train. We are not therefore called upon to determine whether the legislation in question would be valid if applied to persons other than those taken up within the State to be set down within it. Confining our attention to the question necessarily involved, it being also the distinct issue presented by the plea of the company, the inquiry is whether the State is precluded from requiring separate accommodations for purely domestic travelers of different races because to furnish the same would impose a burden upon the carrier or because the requirement affects interstate travel upon the trains of the company. Upon this question this court sustains the relation of an inferior tribunal and, without regard to the opinions of its members, must conform to the decisions of the Supreme Court of the United States, by which court only can an authoritative decision be made.

Without attempting to argue for or against any conclusions reached by that court, we shall endeavor to deduce from them the principles proper to be applied to the decision of the question involved.

The development of an immense interstate commerce, with its incidental multitude of phases and ramifications, has disclosed to the generation of this day the magnitude of the power delegated to the Federal Government by that clause of section 8 of art. 1 of the Constitution by which Congress is given power "to regulate commerce with foreign nations and among the States and with the Indian tribes."

It is not surprising that the recognition of its extent has been of gradual growth in the court called upon to construe it, nor that in judicial utterances there have been inconsistent and conflicting expressions. It does not lie within our province to point out or criticise real or supposed inconsistencies; but, taking the more recent decisions of that court, where they have limited or overruled prior cases, to apply the principles, as we understand them to be now announced, to the cause before us. But it does not follow that we are to treat decisions not clearly overruled as not longer binding because remarks are to be found in later cases which, somewhat extended, may be thought to be applicable to the facts here involved.

We concede it to be settled, as stated by counsel for appellant, that transportation of persons is as much commerce as transportation of property, and, as a corollary, that the interstate transportation of persons is interstate commerce, and that the State may not regulate such commerce, since it is national in character and requires

9 uniformity of regulation. It may also be conceded that absence of legislation by Congress on the subject is indicative of its will that such commerce shall be free and untrammelled. The question returns whether the act under consideration is a regulation of interstate commerce, and upon its solution hinges the controversy.

The cases of Hall *v.* De Cuir, 95 U. S., 485, and Wabash, &c., R. R. Co. *v.* Illinois, 118 U. S., 557, are relied upon as decisive against the validity of the statute. We do not so understand them.

Hall *v.* De Cuir was a case in which the validity of a statute of the State of Louisiana was involved. The statute, in effect, required all persons engaged within that State in the business of common carriers of passengers to admit all persons travelling — the conveyance employed in the business to equal privileges in all parts of the conveyance without discrimination on account of race or color, and a right to recover actual and exemplary damages was given to any person injured by the refusal of the carrier to comply with the law. De Cuir, a passenger from one point to another within the State, was refused access to the cabin reserved for white passengers on a steamer engaged in interstate business on the Mississippi river, and brought suit against the owner of the boat to recover damages. The statute was held unconstitutional by the Supreme Court of the United States, as being a regulation of interstate commerce. As observed by this Court in Yazoo, &c., R. R. Co. *v.* Stone, 62 Miss , the State of Louisiana had no relationship to or control over the instruments by which the commerce was conducted. It was an attempt to regulate an interstate carrier, acting under license from the United States and plying the navigable waters of the same. The State had no control over the way, the boat, or the owner. It was an attempt to regulate that which it did not create or license and which it might neither control or [nor] destroy. The language of the court as applied to the facts of that case is compatible with a liberal exercise by the State of power over its own corporations, which live and move and have their being by virtue of its laws. It is urged, however, that in Wabash, &c., *v.* Illinois, *supra*, it has been held equally incompetent for the State to regulate interstate commerce conducted over artificial wars [ways] created by the State or under its authority as to regulate commerce on the navigable waters of the United States. In that case the only question presented or decided was whether a State statute controlling the rates to be charged by the common carrier for transportation of freight within the State could be applied to a contract for continuous transportation from a point without to a point within the State. It was held that it could not, since the contract was for interstate commerce, and as such not within State regulation or control. In delivering the opinion of the Court, Miller, J., reviews the cases of Munn *v.* Illinois, 94 U. S., 113; Chicago, &c., R. R. Co. *v.* Iowa, *id.*, 155, and Peik *v.* Chicago, &c., R. R. Co., *id.*, 164, and declares much that was said in them to have been decided without sufficient consideration. His criticism of those cases was, however, confined to so much thereof as affirmed the right of the State, in the absence of legislation by Congress, to regulate the transporta-

tion of property or persons from points within to points without the State. We are not warranted in extending the effect of the decision so as to include denial of the right of the State to regulate domestic transportation, though conducted by carriers engaged in interstate commerce. Indeed, the express language of the court excludes such conclusion, for the majority opinion declares that "if the Illinois statute could be construed to apply exclusively to contracts for a carriage which begins and ends within the State, disconnected from a continuous transportation through or into other States, there does not seem to be any difficulty in holding it to be valid."

10 The question here is a different one from either of those involved in these cases. It is more nearly akin to that decided in Stone *v.* Farmers' Loan and Trust Company, 116 U. S., 307, in which the right to regulate domestic commerce was considered and upheld. It is a matter of common knowledge that there are at present many State commissions for the regulation of State commerce and one by the General Government for the regulation of that between the States. Each occupies a field from which the other is excluded, and each is essential, or deemed so to be, to full control of the commerce of the country. By what authority can the transportation of domestic travellers be controlled if not by that of the State? Congress has no jurisdiction over the subject, it being confined to commerce "with foreign nations and among the States and with the Indian tribes." Suppose Congress should deem it advisable to enact a law similar to our statute for the regulation of interstate transportation of passengers, could it be contended it controlled as to passengers taken up and set down within a State? But how does the statute interfere with interstate commerce if it be true that it has no application save to those travelling wholly within the State? It is manifest from the plea that the statute is resisted because it imposes a burden, not on commerce, but upon the carrier. The addition of a car at the State line to each of its trains may impose additional expense to the company, but how it is a burden or obstruction to commerce it is difficult to perceive. We do not know of any decision in which the supposed burden of commerce—easily obviated by the act of the corporation—has been held to invalidate a statute in the interest of the carrier. The United States have no concern with the policy merely of domestic State laws. It may be that they are harsh or unfair or unjust. Admit it, and what follows? Surely not that they are invalid, but only that they should be repealed by that power having jurisdiction of the subject.

It would seem to follow that, since the transportation of passengers and of property stand upon the same footing, regulations of property within the State limits being valid, regulations touching passengers of the same character—*i. e.*, domestic travellers—are also valid.

We do not think the act under consideration was repealed by section 3 of the act of March 14th, 1888.

The judgment is therefore affirmed.

L., N. O. & T. R. R. Co. } 6058.
v.
THE STATE. }

CAMPBELL, judge, delivered the following opinion:

I am of the same opinion. The point of fatal objection to the statute of Illinois, as announced in Wabash R. R. Co. *v.* Illinois, 118 U. S., is that it is not a regulation of railroads within the State, but had direct reference to "through transportation," from State to State, and sought to effect it by compelling the adoption in Illinois for travel and transportation of the same relative rates charged over the entire route, and therefore it was held to be a regulation of interstate commerce. Our act is no such thing. Its operation is local. It has no foreign aspect. It does not look across State lines or attempt to interfere with or affect the carrier outside of this State. It is not an attempt to regulate interstate commerce, but, dealing with its own creatures, which have a local existence, it makes a police regulation operative in Mississippi on the carrier and easy to be complied with by the employment for local travel of the cars prescribed.

11 And on the 10 day of June, 1889, the following final judgment was made and entered in said cause by said supreme court, to wit:

LOUISVILLE, NEW ORLEANS & TEXAS RAILWAY COMPANY } 6058.
v.
STATE OF MISSISSIPPI. }

This cause having been submitted, on a former day of this term, on the record herein from the circuit court of Tunica county, and this court, having sufficiently examined and considered the same and being of opinion that there is no error therein, doth order and adjudge that the judgment of said circuit court, rendered in this cause at the January term thereof, A. D. 1889, be, and the same is hereby, affirmed, and that the appellant and Calvin Perkins, surety, do pay the costs of this cause in this court and in the court below expended, &c., to be taxed, &c.

And on the 12 day of June, 1889, there was filed in said cause a petition for a writ of error to the Supreme Court of the United States in words and figures as follows, to wit:

UNITED STATES OF AMERICA, }
State of Mississippi. }

To the Honorable J. M. Arnold, chief justice of the State of Mississippi:

Your petitioner, The Louisville, New Orleans and Texas Railway Company, respectfully shows that in a certain cause, wherein petitioner is the appellant and The State of Mississippi the appellee, in the supreme court of the State of Mississippi, in a suit which was

pending therein on appeal from the judgment of the circuit court of Tunica county, Mississippi, rendered on the — day of ——, 1888, against the said appellant, there was rendered, on the 10th day of June, 1889, a judgment by the supreme court of said State affirming the judgment of the said circuit court, with costs against petitioner; and petitioner avers that in said suit and in the proceedings on appeal there was drawn in question the validity of a law of the State of Mississippi and the validity of an authority exercised under the said State on the ground that they were repugnant to the Constitution of the United States and in denial of a right and claim founded thereon, and the decision was in favor of the validity of the law and the authority exercised under the State of Mississippi and against the claim aforesaid; and the said supreme court of the State of Mississippi being the highest court of said State in which judgment can be had in said suit, and said decree being against his [the] right and claim which was especially set up by said petitioner in said suit, it is aggrieved thereby and prays a writ of error, with a citation and supersedeas, returnable to the Supreme Court of the United States on the second Monday of October next; and, as in duty bound, will ever pray, &c.

LOUISVILLE, NEW ORLEANS & TEXAS RAILWAY CO.,
By W. P. & J. B. HARRIS, *Its Attorneys.*

Let the writ of error, with citation and supersedeas, issue as prayed for in the foregoing petition.

June 10th, 1889.

JAMES M. ARNOLD,
Chief Justice of the Supreme Court of Mississippi.

Endorsed: Filed June 12, 1889. Oliver Clifton, clerk.

12 And on the 12th day of June, 1889, there was filed in said supreme court a writ of error bond in the following words and figures, to wit:

Know all men by these presents that we, The Louisville, New Orleans & Texas Railway Company, as principal, and William G. Yerger and Le Roy Percy, as sureties, are held and firmly bound to the State of Mississippi in the full and just sum of one thousand dollars ($1,000.00), to be paid to the State of Mississippi, and to which payment, well and truly to be made, we bind ourselves, our successors, assigns, heirs, executors, and administrators, jointly and severally, firmly by these presents.

Signed by us and dated this 10 day of June, 1889.

The condition of the above obligation is such that whereas on the 10 day of June, 1889, at a term of the supreme court of the State of Mississippi begun on the third Monday of April, 1889, and still being held on the day aforesaid, in a certain suit then pending in said court, wherein The Louisville, New Orleans & Texas Railway Company was the appellant and The State of Mississippi the appellee, numbered on the docket of said court —, a final decision was

rendered by said supreme court; and the said Louisville, New Orleans & Texas Railway Company feeling aggrieved by said decision, and having asked of and obtained an order granting an appeal to reverse said decision so rendered as aforesaid, which order of appeal was asked for and granted by said supreme court at its said April, 1889, term, returnable to the Supreme Court of the United States, to be holden at Washington, District of Columbia, on the second Monday of October, 1889, and to operate as a supersedeas on the execution of a bond, payable and conditioned according to law, in the penalty of one thousand dollars ($1,000.00), with two or more sufficient sureties:

Now, if the above-bound Louisville, New Orleans & Texas Railway Company shall prosecute its said appeal to effect and answer all damages and costs if it shall fail to make its plea good, then above obligation to be void; else to remain in full force and effect.

LOUISVILLE, NEW ORLEANS AND
TEXAS RAILWAY COMPANY,
By YERGER & PERCY, *Att'ys.*
WM. G. YERGER.
LE ROY PERCY.

The above bond is approved by me this the 10th day of June, 1889.

JAMES M. ARNOLD,
Chief Justice Supreme Court of Mississippi.

Endorsed: Filed June 12, 1889. Oliver Clifton, clerk.

13 Supreme Court of Mississippi.

I, Oliver Clifton, clerk of the supreme court of Mississippi, do hereby certify that the above and foregoing is a true and correct copy of the record and proceedings, as well as of the petition for a writ of error and the writ of error bond, in the case of—No. 6058—Louisville, New Orleans & Texas Railway Company *v.* State of Mississippi, lately pending in and determined by the said supreme court, as the same appears of record and on file in my office.

Witness my hand and the seal of said supreme court, at office, at Jackson, this July 24, 1889.

[Seal Supreme Court, State of Mississippi.]

OLIVER CLIFTON, *Clerk*,
By C. C. CAMPBELL, *D. C.*

Fees for copy of record, $12.00, paid by appellant.

OLIVER CLIFTON, *Clerk*,
By C. C. CAMPBELL, *D. C.*

14 UNITED STATES OF AMERICA:

In the Supreme Court of the United States. October Term, 1889.

THE LOUISVILLE, NEW ORLEANS & TEXAS RAILWAY COMPANY, Plaintiff in Error,
v.
THE STATE OF MISSISSIPPI, Defendant in Error.

Writ of error to the judges of the supreme court of the State of Mississippi.

The plaintiff in error comes, by attorney, and says that the supreme court of the State of Mississippi in the proceedings and judgment in this cause erred, in this, to wit:

1st. It was error to sustain the validity of the act of the Mississippi Legislature of the 2nd of March, 1888, entitled An act to promote the comfort of passengers on railway trains.

2nd. The court erred in affirming the judgment of the circuit court of Tunica county.

3rd. It was error to sustain said act to extent of its enforcement as a regulation of purely internal travel.

W. P. HARRIS,
For Plaintiff in Error.

[Endorsed:] Filed June 21, 1889. Oliver Clifton, cl'k, by C. C. Campbell, D. C.

15 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the supreme court of the State of Mississippi, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court of the State of Mississippi, before you or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between Louisville, New Orleans and Texas Railway Company and The State of Mississippi, wherein was drawn in question the validity of a statute of or an authority exercised under said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the
16 decision was in favor of such their validity, a manifest error hath happened, to the great damage of the said Louisville, New Orleans and Texas Railway Company, as by its complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Su-

preme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court, the 11th day of June, in the year of our Lord one thousand eight hundred and eighty-nine.

[Seal Circuit Court U. S., South. District of Mississippi.]

JAS. M. McKEE,
Clerk of the Circuit Court of the United States
for the District of Mississippi,
Per R. H. WINTER, *D. C.*

Allowed by—
JAMES M. ARNOLD,
Chief Justice of the Supreme Court of Mississippi.

[Endorsed:] No. 6058. —— —— *versus* —— ——. Writ of error. Filed June 12, 1889. Oliver Clifton, clerk.

17 THE UNITED STATES OF AMERICA:

Circuit Court of the United States, Southern District of Mississippi.

The President of the United States to The State of Mississippi, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington on the second Monday of October next, pursuant to a writ of error filed in the *clerk's* office of the clerk of the supreme court of the State of Mississippi, wherein The Louisville, New Orleans & Texas Railway Company is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said Louisville, New Orleans & Texas Railway Company, as in said — supreme court of the State of Mississippi mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf; and you are hereby further admonished that bond for supersedeas has been duly filed with said writ of error, and therefore that you will cease and abstain from all proceedings to execute said judgment of the supreme court of the State of Mississippi.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 11th day of June, in the year of our Lord one thousand eight hundred and eighty-nine.

[Seal Circuit Court U. S., South. District of Mississippi.]

JAS. M. McKEE,
Cl'k U. S. Cir. C't,
P'r R. H. WINTER, *D. C.*

Witness the Hon'l. J. M. Arnold, chief justice of the State of Mississippi.
June 11th, 1889.

JAMES M. ARNOLD.

18 [Endorsed:] 6058. United States circuit court, — district of —. No. —. —— —— *vs.* —— ——. Citation. Filed June 12, 1889. Oliver Clifton, clerk.

I hereby acknowledge service of the within citation & waive further execution thereof.

T. M. MILLER,
Att'y Gen'l Miss'pi.

Endorsed on cover: Mississippi supreme court. No. 1195. The Louisville, New Orleans and Texas Railway Company, plaintiff in error, *vs.* The State of Mississippi. Filed August 13, 1889.

Office Supreme Court U. S.
FILED.
SEP 28 1889
JAMES. H. McKENNEY,
CLERK.

UNITED STATES OF AMERICA.

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1889.

THE LOUISVILLE, NEW ORLEANS & TEXAS RAILWAY CO., APPELLANT,

v.

THE STATE OF MISSISSIPPI.

WRIT OF ERROR TO THE JUDGMENT OF THE SUPREME COURT OF THE STATE OF MISSISSIPPI.

BRIEF FOR APPELLANT.

BY W. P. HARRIS AND YERGER & PERCY.

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1889.

WRIT OF ERROR TO THE JUDGMENT OF THE SUPREME COURT OF THE STATE OF MISSISSIPPI.

THE LOUISVILLE, NEW ORLEANS AND TEXAS RAILWAY CO.,

v.

THE STATE OF MISSISSIPPI.

The plaintiff in error is, and was at the date of the proceeding set forth in the record, an inter-State public common carrier by railroad, with a continuous line of road beginning at Memphis, in the State of Tennessee, and ending at New Orleans, in the State of Louisiana; passing through the State of Mississippi. It was engaged in inter-State commerce with traffic arrangements corresponding with the business, with charters or license from each of these States; and it was free to adapt its passenger accommodations to the needs of the general public.

On the 2d of March, 1888, the Mississippi Legislature passed an act with this title: "An act to promote the comfort of passengers on railroad trains." The act is as follows:

SECTION 1. Be it enacted, That all railroads carrying passengers in this State (other than street railroads) shall

provide equal, but separate, accommodations for the white and colored races by providing two or more passenger cars for each passenger train, or by dividing the passenger cars by a partition so as to secure separate accommodations.

SECTION 2. * * * That the conductors of such passenger trains shall have power, and are hereby required, to assign each passenger to the car or the compartment of a car (when it is divided by a partition) used for the race to which said passenger belongs; and that should any passenger refuse to occupy the car to which he or she is assigned by such conductor, said conductor shall have power to refuse to carry such passenger on his train, and neither he nor the railroad company shall be liable for any damages in any event in this State.

SECTION 3. * * * That all railroad companies that shall refuse or neglect within sixty days after the approval of this act to comply with the requirements of section one of this act, shall be deemed guilty of a misdemeanor, and shall upon conviction in a court of competent jurisdiction, be fined not more than five hundred dollars; and any conductor that shall neglect to, or refuse to, carry out the provisions of this act shall, upon conviction, be fined not less that twenty-five nor more than fifty dollars for each offense.

SECTION 4. * * * That all acts and parts of acts in conflict with this act, be and the same are hereby repealed, and this act to take effect and be in force from and after its passage.—*Act of 1888, p. 48.*

Under this statute the plaintiff in error was indicted in the county of Tunica, for failing to comply with the requirements of section one.

Record, p. 8.

The indictment contained two counts. The first charges that the railroad company on the 23d day of July, 1888, was then and there engaged in carrying passengers in said county and State, and did unlawfully and wilfully neglect and refuse to provide equal and separate accommodations for the white and colored races.

The second count charges that said railway company,

a corporation chartered under the laws of the State of Mississippi, running and operating a railroad for carrying passengers in said State and county, did unlawfully and wilfully neglect and refuse to provide two or more cars, or separate accommodations, one for the white race, and one for the colored race.

PLEAS.

To this indictment the railroad company filed the general plea of "not guilty," and a special plea as follows:

"And the said Louisville, New Orleans & Texas Railroad Company * * says, that on and before and ever since the first day of May, 1888, the defendant owned and operated a line of railroad forming a continuous and unbroken line of railway from Memphis, in the State of Tennessee, to New Orleans, in the State of Louisiana, and now doth own and operate the same, carrying then and now on its passenger trains, passengers of both the white and colored races from Memphis and other points in the State of Tennessee, and destined to New Orleans, in the State of Louisiana, and other States in the United States, and so carrying then and now passengers of both of said races, from New Orleans and other points in the State of Louisiana destined to Memphis, Tennessee, and other points in Tennessee and elsewhere throughout the United States, that it doth now and hath at all times, and on all occasions provided equal but not separate accommodations for passengers of the white and colored races; that to provide separate accommodations for the two races would greatly increase the cost of carrying the interstate passengers aforesaid, and greatly hinder and obstruct the defendant in making its interstate connections with other carriers of passengers; and that it hath not since long prior to the first day of May, 1888, carried any passengers in the county of Tunica aforesaid, or within the limits of the State of Mississippi, save only on its passenger trains regularly engaged and operated in the interstate carriage of passengers aforesaid, and in all instances actually carrying such interstate passengers, the right, privilege and immunity of doing which free from any governmental regulations, or control thereof, save by the

Congress of the United States, the defendant doth plead and claim, under Article One, Section Eight, of the Constitution of the United States:

Record, p. 4,

To this plea there was a general demurrer by the State which was sustained.

Record, p. 5.

A trial was had on the plea of not guilty, and a verdict of guilty by the jury; and the railroad company was fined in the sum of $250 dollars by the court, and from this sentence there was an appeal to the Supreme Court of the State, in which the error assigned to the judgment of the Circuit Court of Tunica county, was the action of the court in sustaining the demurrer to the special plea.

The Supreme Court of Mississippi affirmed the judgment below; ~~holding the especial plea to be bad, and up~~holding tho special plea to be bad, and upholding the validity of the State statute against the claim of the plaintiff in error, that the act was in conflict with the eighth section of Art. 1 of the Constitution of the United States.

To this judgment the railroad company sued out a writ of error to this court, under the 28th section of the Judiciary Act, and assigns for error here, that the Supreme Court of Mississippi held the act of the Legislature of March 20, 1888, valid, and the plea insufficient.

Record, p. 16.

The Supreme Court of Mississippi held the act valid, as applied to strictly internal commerce or travel—to persons getting on the train in the State to go to other points in the State. *Record, p. 8, et seq.*

POINTS RELIED ON.

(1) The decision of the Mississippi Court is in direct conflict with the deliberate judgment of this court, besides being an unwarrantable dealing with a statute intended to have effect upon both State and interstate travel to and from, as well as within the State, bearing on each train employed, whether local for local travel, or national for interstate travel.

Hall v. DeCuir, 95 U. S., 485.
Wabash R. Co. v. Illinois, 118 U. S.

No one can reasonably conclude that the Legislature intended to regulate only the intercourse of the people of the State who might chance to travel from one point to another in the State; while those who might come in or go out of the State, should be left to endure the *discomfort* assumed to attend the transient mingling of the white and colored races in a train or coach.

(2) The act of Mississippi as applied by its court was intended to subject the interstate carrier to the alternative of conforming his whole voyage or journey—his *general arrangements, force and equipments*, to the will of Mississippi, regardless of the dispositions of Louisiana and Tennessee; or to provide a distinct scheme of transportation for the local travel of the State, in order to avoid molesting interstate travel—a scheme which, in the language of the plea, imposes on the carrier the burden of increased expense, of added force, and appliances beyond the actual needs of the business, and entirely independent of its activity or volume, as a condition or restriction to the passage through the State, interrupting the lawful arrangements adapted to interstate commerce.

(3) The carrier, its road, and the process of commerce it conducts, the instruments employed, fall with the business to which they are inseparably attached, under the commerce clause of the Constitution. It is impossible to separate the carrier and his conveyance from the commerce while in this process. This seems to be the logical sequence.

Sherlock v. Alling, 93 U. S., 99–104.

Smith v. Alabama, 124 U. S., p, 473.

Taking the carrier, imposing conditions upon it, are impediments to its *free admission to the Territory of the State* as a carrier of interstate commerce. Alternative conditions.

Henderson v. Mayor & Co., 92 U. S., 259.

Cooper v Manufacturing Co., 113 U. S. 727.

People v. Compagnie General, 107 U. S., 59.

(4) The carrier has the right, being the agency of interstate commerce, and having a 'national' character, to

uniformity of regulations affecting the process of transportation.

(5) The State has no right to subject the interstate carrier to the alternative of conforming his process throughout the voyage to the behests of the State or to give discrimination to a class of travellers of its own selection. The imperfection and invalidity of the law is made apparent by the fact, that the regulation cannot be made effectual in Tennessee and Louisiana, so as to produce uniformity.

(6) It is plain the act of Mississippi was intended as a discrimination between colored people and white people equal before the law, under the name of promoting "comfort." However natural and excusable, it is a Legislation of sentiment and not "police" as it does not relate to safety of life or limb, to physical comfort or convenience.

(7) To admit power in the State to govern the conduct and processes or methods of the interstate carrier on the ground that the regulation may be confined to a dealing with internal travel, is a warrant for taxing the carrier according to its internal passenger traffic, or imposing other burdens and restrictions on its business.

THESE POINTS ARGUED.

This court in *Hall v. DeCuir* before cited, in view of the delicate and important duty before it, and feeling the necessity of caution and circumspection, took unusual pains to be explicit in announcing its judgment, lest it might be drawn into a precedent for more or less than it imported.

The court introduced its judgment in these words:

"For the purpose of this case, we must treat the act of Louisiana of the 23d of February, 1869, as requiring those engaged in interstate commerce to give all persons travelling in that State, upon the public conveyances employed in such business, equal rights and privileges in all parts of the conveyance, without distinction or discrimination on account of color. Such was the construction given to the act in the court below, and it is conclusive upon us, as a construction of a State law by the State

courts. It is with this provision of the statute alone that we have to deal. We have nothing whatever to do with it as a regulation of internal commerce, or as affecting anything else than commerce among the States." *Page 487, Rep.*

The provisions of the Louisiana law are set forth in the report of the case. It will be observed, that it is made to apply in express terms, to railroads.

The Louisiana court had decided that the act applied to the case of a person getting on the conveyance of an interstate carrier in Louisiana to travel to another point in that State. The carrier's voyage was from New Orleans to Vicksburg in the State of Mississippi—a New Orleans and Vicksburg packet.

The feature which brought the case within the commerce clause of the Constitution, is stated by this court in the effort to be explicit, that the *carrier* was engaged in *the business of interstate commerce.*

Thus it appears that the *carrier* and *his conveyance* were engaged and employed in that business, and being thus engaged and employed, could not be subjected to the regulation imposed by the Louisiana law.

The voyage or journey on which the carrier is proceeding, and the business he is engaged in—the vehicles he employs in accomplishing the transportation, (which is the commerce, and if it be interstate commerce) determines the question of power to regulate the conduct of the carrier—the arrangement of his accommodations, etc.

No fair mind can doubt for a moment that if the case of *Hall v. DeCuir* had occurred on an interstate railroad train, the decision would have been the same.

It must be the same now, we conclude, from the language of the court in *Wabash Railway v. Illinois, 118 U. S., 557.* "The applicability of the language in Hall v. DeCuir to transportation by rail is obvious. Whatever may be the instrumentalities by which transportation from one State to another is affected, it is but one voyage as much as that of a steamboat on the Mississippi river."

The dissenting Justice Bradley speaking of *Hall v. DeCuir*, said it compelled the steamboat *proprietor* (we italicise) to place colored persons travelling from one place to another in Louisiana, in a cabin set apart for white persons, many of whom were bound for another State, and that therefore its operation was a regulation of interstate commerce. It was against the rule that, in the absence of action by Congress, commerce must remained free and untrammelled. By that rule the *proprietor* of the vessel was at liberty to adopt such reasonable rules and regulations for the disposition and comfort of passengers upon his boat while pursuing the voyage as seemed to him most to the interests of all concerned; the statute took away from him the power so long as he was in Louisiana.

P. 594.

The point we make is, that a State cannot regulate the mode of disposing of passengers, the arrangement of vehicles, the conduct of the carrier engaged and employed in interstate commerce, to suit its own view.

The concession of such a power in a State, is equivalent to a surrender of the power of Congress over these subjects. It is not material that we do not see in the particular regulation any dangerous tendency, nor injurious consequences, to business or money making, nor that we may believe that a State will not carry its regulations to any injurious extent.

"Questions of power do not depend on the degree to which it may be exercised. If it may be exercised at all, it must be exercised at the will of those in whose hands it is placed. * * The question is, where does the power reside? not how far will it be probably abused."

Brown v. Maryland, 12 Wheat. p. p. 439, 472.

Where does the power to regulate the interstate carrier and his dispositions and arrangements of passengers, and vehicles reside?

True there is no tax on the carrier, nor on his vehicle, but he is placed under restrictions, and his freedom of action is taken away or suspended in the State of Mississippi.

By the Mississippi statute he is forced to the alternative of conforming his arrangements for the entire voyage, to the will of the Mississippi Legislature; that is to adopt the separate accommodation principle, throughout for all, or he is compelled to provide distinct vehicles or methods in Mississippi territory in order not to displace interstate travellers. Doubtless in this case, the carrier will adopt a uniform rule for the whole voyage under the constraint of the alternative of increased expense in his business, and the addition of force and appliances in establishing a distinct train, or distinct cars, for a portion of the Mississippi travellers, which to be effective must be exclusive, which the traffic does not require.

It is an effort to localize the trains of the interstate railroad, if not to infuse the sensitiveness of Mississippi feeling into the whole voyage and into all passengers.

This means that the State may compel the instrument of national commerce or intercourse, to provide at its own expense, however great, and at its own risk, just such accommodation for the State as she may prescribe. The parlor car, the buffet, the vestibule, and any combination or grouping of passengers that the taste for luxury or fashion or social antipathy, or caprice may suggest may be required of the carrier.

The Supreme Court of Mississippi had under consideration in this case, an act as broad as the act of Louisiana set out in *Hall v. DeCuir*, in its application to conveyance by railroads. The Mississippi act requires the separation of the white and colored races, in travelling in that State; that of Louisiana forbids the carrier to separate them. The former is more stringent, requiring the separation without regard to the feelings of the passengers. In order to save the Mississippi act from condemnation, the Mississippi court cuts it up, and shapes it to an operation to which there has never been an ascertained legislative assent—an operation in fact precisely like the case of *Hall v. DeCuir*. That is to say to operate on just such conditions as the facts of that case presented, as to the ~~distinction~~ destination of the passenger. So that by judicial manipulation, the railroad company is

made to provide by an alteration of its interstate arrangements, for cases of persons getting on the trains in Mississippi, to travel to another point in the State, on the idea that this would be but a regulation of internal commerce, to which the federal power does not extend; putting the law on the footing of a law providing against excessive, or discriminating rates, or partiality. The result is to overrule the case of *Hall v. DeCuir*, and its doctrine, should the decision of the Mississippi court be upheld here.

We have only to suppose the Louisiana law in force now, as in this view of the law it might well be, and we would then have the condition of things environing the interstate carrier, which are so clearly depicted by this court in *Hall v. DeCuir;* that is, the case of each of the States through which the interstate road passes, undertaking to enforce its own views of interest, or of social habits, especially as respects the association of the races, by laws operating on the carrier and his arrangements for accommodation, and in direct conflict with each other. *Hall v. DeCuir, p. 489.*

If the carrier, and the road, the business and appliances, have the national, and not the local character, then he has the right to be governed by an authority which can secure uniformity, and that authority is Congress alone.

Is not, the carrier's business as an interstate carrier, his appliances and methods, the object of protection against arbitrary and diverse regulations, as the agency by which commerce between the States is carried on, as well as the subjects of transportation? Burdens and restrictions upon him in regard to the methods of transportation, are restrictions on the commerce he conducts, and it matters little whether it is a tax, or an expenditure for extra cars and force, not needed for the business.

The necessity of uniformity of regulation has been the burden of many utterances by this court, but should the views of the Mississippi court prevail, the constitutional provision for that object will prove inadequate.

There is unity in the line of road; unbroken continui-

ty from Memphis to New Orleans, as the plea alleged, and the demurrer admits. The Mississippi river, by the side of which it runs, is not a more complete unit. The carrier is one governing body, owner and operator. Its passenger trains are through trains only with one voyage, with an uniform rule of equal accommodations for all travellers of all States. The Mississippi act *does not admit of establishing a local passenger service by local passenger trains.* Each passenger train, whether a local or a through train, must be equipped alike, and on the Mississippi idea.

It was not the intention of the Legislature to require local trains, for local travel, but to compel the carrier to so arrange the through trains employed in interstate transportation, as to be conformed to that idea.

Act sec. 1, p. 48.

As the Mississippi court has cut out the pattern, there must be, in order to avoid displacement of, or interference with the interstate travel, a Mississippi department or section in or attached to the through trains. To insure the uniformity required in the transaction of interstate commerce, in regulations bearing on the carrier, the carrier must take the risk of carrying the Mississippi order into the entire line, which may be feasible so long as the other States forbear to interfere, or resort to an increased outfit and expense.

It seems that this aggressive legislation against the unity of the common line business and the voyage, differs from the legally severable subject of rates. The Constitution recognizes the internal commerce of a State as something other than "commerce among the several States." The power of the State over the former is complete when it is exercised to the extent to which government may control the business of its citizens. Over the public common carrier the State may exercise control to prevent extortion and unjust discrimination and secure physical comfort and safety where the carrier's business is confined to the State, but this power can be exercised and must be exercised in such way as not to hamper, obstruct or embarrass by conditions the arrangements of

the carrier adopted for the people of two or more States. The very nature of the engagement in interstate commerce for a group of States, with a common line of transportation trains or vehicles, and management necessarily common to all, forbids that any one State may dictate the composition of the trains, or the structure of the cars. No more can it do this than it may dictate the structure and arrangements of the vessels of a line of river steamers—on the mere fact that it has stations or stopping places in a State to receive and deliver freights and passengers.

There is a line of cases which draws a distinction between the vessel or vehicle employed, and these fixtures or wharves or conveniences and agencies strictly territorial and local, which assists us to draw the line between the regulation of the *contracts* for purely internal carriage and regulations of the structure of vehicles or the composition of trains and grouping of passengers common to several States on an interstate line of traffic.

Cooly v. Wardens, 12, How 299.
Gilman v. Philadelphia, 3, Wall 713.
Mobile v. Kimbal, 102 U. S. 691.
Gloucester Ferry v. Penn, 114 U S. 196.

The regulation of station houses in the State, and like police as to fixed conveniences, local in situation and influence, stand on a different footing from interference with the carrier's arrangements for interstate carrriage.

We venture to say that this is the idea contained in *Hall v. DeCuir*. If the Louisiana law had contained the requirements of that of Mississippi now under consideration, can there be a doubt that it would have met the fate of the act condemned in that case?

We do not see that the enforcement of the section of the Mississippi act which touches the passenger; i. e. sec. 2, is needed to bring the present case within the influence of *Hall v. DeCuir*. The Mississippi act is one piece, with one idea, i. e., the separation of the white and colored races in the transient association on trains. The 1st section provides for the *preparation* of the cars or trains, for the requirements of Secs. 2 and 3. There

is but the one purpose to be accomplished by the three sections. This requires first the structure of interstate trains or cars by the carrier to meet a peculiar feeling in Mississippi. The 2nd and 3rd carry out the purpose of the change of structure.

The Supreme Court of Mississippi in Stone et al. v. R. R. Co., 62 Miss., 633, and in the case now under consideration here, in order to take State interference with interstate carriers out of the influence of *Hall v. DeCuir* suggests two points of difference.

1st, That the vessel in that case was conducting interstate commerce on a public navigable water of the United States, under the navigation laws.

2d, That the railroad company is a corporation created by the State.

This court in the Louisiana case was careful not to put its decision on the ground of water carriage and *license*. State commerce may be carried on on such waters. One of the judges added that view of the case. The majority however, looked to the *business* the carrier was engaged in, engaged in interstate commerce. There is no difference between cabins and cars or coaches.

The 2d point of difference is not a distinction. It surely would not have varied the result if the vessel had been owned and run by a corporation created by the State. It is the business, not the ownership, that gives character to the carrier as he is affected by the commerce clause of the Constitution.

The grant of a charter is in no sense the acquisition of legislative power. No power results from the grant. The Legislature cannot revoke the charter, nor alter it without power reserved, or the consent of the corporation. The Legislature bestows, but does not receive. The courts may take away the charter, for non-user or mis-user, but the Legislature cannot.

The foundation of the power of the Legislature, such as it is, is *in the character of the business* The business of a public common carrier is for the public, and this is the case whether he has a charter or not. The power thus derived, is according to the authorities cited in the

discussion of *Muer v. Illinois, 94 U. S., 113,* the power to protect the public against extortion in charges, or partiality in a public business—against the power of monopoly. Nothing can be further from this power than the claim now advanced to indulge in sentimental legislation.

The other source of power, undefined indeed, is the inherent and inalienable right of a government to secure by proper regulations the health, safety and *physical comfort* of its people in any business and under any conditions. This is classed as police power, which in no wise depends on the fact that a business is conducted under a charter. It is not extended nor enlarged by the fact that the persons engaged in any business are associated in a partnership, or for convenience obtain by a charter the privilege of being treated as one person, and perpetuity of succession.

It is only necessary in order to dispel this illusion about charters, for such it seems, to ask what are the particular powers which result to the Legislature of a State from granting a charter, none being reserved in the grant? No one is able to point to a single power thus derived. There is jurisdiction, but is this any more than the State would have over a partnership or an individual natural citizen?

The corporation here is the result of the co-operative legislation of several States. The chief inducement to each State in lending its co-operation, was the establishment of a common line of transportation among them. It matters not whether the license to enter the State is by charter or the mere grant of the right of way, the power of the State is the same, no more, no less.

In *Gloucester Ferry v. Penn, 114 U. S., 196,* the court said in general terms that "interstate commerce by corporations is entitled to the same protection against State exactions which is given to such commerce when carried on by individuals."

There seems to be some confusion of ideas about "public navigable waters of the U. S." It would seem that the Mississippi court has the idea that there can be no

internal or local State traffic or transportation by means of such waters; that it all becomes national, by reason of the element on which transportation proceeds, and suggests that this gives to *Hall v. DeCuir* a distinguishing trait, not possessd by the case in hand. The Mississippi river from New Orleans to Hermitage, the destination of the passenger in that case, was within the territory of Louisiana and the jurisdiction of Louisiana. No doubt can exist that a local State commerce may be carried on by river transportation between points in Louisiana, the voyage being entirely within the territory of that State, though the river is a public navigable water of the United States, free to all persons. The case of Hall v. DeCuir was that of a conveyance or vessel whose regular voyage was from Vicksburg, Mississippi, to New Orleans, Louisiana, and it was proceeding on that voyage.

The distinction between a voyage on the "high seas" and one performed within the territorial limits of a State, though on public navigable water, is pointed out in *Lord v. Steamship Co., 102 U. S., 541.* Suppose the case of New Orleans and Baton Rouge packet.

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